IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2623 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMBIKA CHEMICAL INDUSTRIES

Versus

STATE OF GUJARAT

Appearance:

MR NAVIN K PAHWA for Petitioner

MR BY MANKAD, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/10/2000

ORAL JUDGEMENT

Rule. Mr BY Mankad, learned AGP waives service of Rule for the respondents.

2. Ambica Chemical Industries, a partnership firm was granted licence for industrial solvent to be sold in bulk as well as in retail. The license was granted by the Mamlatdar, Petlad on 11.10.1996. That license came

to be cancelled by the Mamlatdar by order dated 9.2.1999 (Annexure "C") on the ground that there was a change of partners. The matter was carried in appeal. The Collector, Anand also dismissed the appeal by his order dated 3.3.1999 (Annexure "D"). The revision against the said order also came to be dismissed by the State Government by order dated 5.4.1999 (Annexure "E"). The present petition is, therefore, filed for challenging the aforesaid orders.

2. It is pointed out in the impugned orders as well as in the affidavit in reply to this petition that when the license was granted to it, Ambica Chemical Industries was having the following four partners :-

1. Narendrabhai B. Patel
2. Harshadbhai D. Patel
3. Bharat M. Patel
4. Jayeshbhai Manubhai Patel

However, subsequently there was a change in the partnership firm. By a partnership deed dated 1.7.1997, petitioner-Bhagubhai Shanabhai Padhiyar was inducted as a partner and by a deed of dissolution of partnership dated 19.7.1997 all the old original partners retired from the partnership firm and only Bhagubhai Shanabhai Padhiyar remained as the sole proprietor. Again Bhagubhai Shanabhai Padhiyar entered into a partnership with one original partner Harshad Patel on 12.3.1998 and that partnership also came to be dissolved on 26.3.1998 under which the petitioner was relieved from partnership. An application was accordingly made to the Mamlatdar. However, in view of the aforesaid changes, the Mamlatdar was of the view that since the original partners did not continue to run the business, the license came to be cancelled on 9.2.1999. As stated above, the appeal and the revision also failed.

3. The petitioner's grievance is that the previous change in the partnership firm was approved by the licensing authority on 7.11.1977 under clause 13 of the license.

4. The stand of the respondents is that when the original license was issued, the licensee was Ambica Chemical Industries, a partnership firm having four partners and that in July, 1997 all of them retired from the business and the business was taken over by Bhagubhai Shanabhai Patel; hence the arrangement was entered into for the purpose of transferring the business alongwith the license and that such a transfer of license is not

permissible. However, it is further stated in the reply affidavit that the petitioner can apply afresh for a license for industrial solvent and his application will be considered in accordance with the rules and regulations.

5. In view of the fact that the petitioner has been running the business for the last three years and the department is prepared to consider the petitioner's case if the petitioner applies for a fresh license, it is not necessary to express any opinion on the legality or otherwise of the impugned orders since the petitioner has agreed to apply for a fresh license. The interests of justice would be served if the petition is disposed of with a direction that if the petitioner makes an application for license for selling in wholesale and retail industrial solvent, the respondents shall consider the same in accordance with law as expeditiously as possible and preferably within two months from the date of receipt of the application.

It is directed accordingly.

6. In order to enable the petitioner to pursue the aforesaid course of action, the ad-interim relief granted on 13.4.1999 shall continue till 15.12.2000.

7. Subject to the aforesaid direction, Rule is discharged.

October 5, 2000 (M.S. Shah, J.)
sundar/-